

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Andreas BUOS et al.
Title: LOUDSPEAKER DRIVER
Appl. No.: 09/986,115
Filing Date: 11/07/2001
Examiner: Phylesha Larvinia Dabney
Art Unit: 2615
Conf. No.: 4653

**REQUEST FOR RECONSIDERATION
UNDER 37 CFR §1.111**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is responsive to the Non-Final Office Action dated November 1, 2006, concerning the above-referenced patent application.

Claims 1, 4-23 and 26-45 are pending, and are presented for reconsideration. The indication of allowable subject matter in claims 1, 4-23, 26-30, 35 and 44 is noted, with appreciation.

Claims 31-34, 36-43 and 45 are rejected as unpatentable over Erickson (US 1,985,722), under 35 U.S.C. §103(a). This rejection is respectfully traversed for at least the following reasons.

Independent claims 31 and 38 recite that a base plate for the loudspeaker exciter is configured to be “mounted on the surface of” the acoustic radiator in a non-repeatedly engageable manner, and that the exciter is attached to the base plate in a repeatedly engageable manner. As the Office recognizes, such is not the case in Erickson’s telephone receiver because “Erickson fails to teach any means, such as non-repeatedly engageable, for attaching the base plate to acoustic radiator (specifically, Erickson does not teach how item

23; 25 is attached to the base plate).” Office Action, page 2. Relying on an “Admitted Prior Art” teaching of the use of glue “to secure plates (planar surface) to radiators and minimized [sic] distortion from movement” (*Id.*), the Office asserts that it would have been obvious to do so in Erickson’s receiver for the same purpose.

The problem with the rejection is that it misconstrues Erickson; and it fails to take into account specific teachings of Erickson that negate such a modification. Erickson discloses two embodiments (Fig. 4, Fig. 5) of a “diaphragm *assembly* unit.” In the first embodiment, the “vibratile member or diaphragm” is identified by reference number 30; in the second embodiment, the diaphragm is identified by reference number 38. In each embodiment, the diaphragm is sandwiched between two relatively thick, apertured “disc members” (23-24; 35-36), together with some annular damping material. Yet the Office construes the entire diaphragm assembly (“23, 24, 30-31; 35-38”) as an acoustic radiator. This construction is invalid because only the “vibratile member or diaphragm” 30, 38 *per se* vibrates to produces sound.

The apertured disc members support the diaphragm at a distance from earpiece 33 (merely one part of a two-piece threaded housing), which the Office equates to Applicant’s recited “base plate.” In other words, the upper disc member (23 as seen in Figs. 1 and 3; 35 as seen in Fig. 6) is interposed between the actual diaphragm 30, 38 and the earpiece 33. Thus, even if, *arguendo*, one were motivated to glue the earpiece to the underlying structure, the glue joint would be between the earpiece 33 and the upper disc member 23, 35 – not the diaphragm 30, 38 *per se*. The resulting structure thus would not meet the limitations of the claims because the earpiece 33 would not be “*mounted on the surface of*” the diaphragm, which would remain spaced from the earpiece.

Further, it is axiomatic, as well as explicit in Erickson, that any restraint on Erickson’s diaphragm 30, 38 must be peripheral, i.e., it must leave the major portion of the center of the diaphragm free to vibrate between the earpiece 33 above and the exciter parts 12, 13 14 below. See, e.g., page 2, lines 43-47; and page 2, line 70 to page 3, line 2 of Erickson. Note that earpiece 33 extends completely across the center of the receiver, interrupted only by a small central recess (unlabeled) where sound vents 34 are located. Eliminating the upper disc member (23, 35) so as to enable gluing of the earpiece 33 directly to the diaphragm (30, 38) would place the diaphragm directly against the large, flat expanse of earpiece 33, leaving the

diaphragm virtually no room to vibrate. Thus, even if, *arguendo*, one of ordinary skill in the art were to consider gluing Erickson's earpiece directly to the diaphragm 30, 38, the idea would have been quickly dismissed because it would have been recognized as rendering Erickson's receiver inoperative.

According to MPEP §2143 (emphasis added):

To establish a *prima facie* case of obviousness, three basic criteria must be met. **First**, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. **Second**, there must be a reasonable expectation of success. **Finally**, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The above discussion makes clear that the rejection based on Erickson in view of acknowledged prior art fails to meet all three of these criteria. Accordingly, the Office has not carried its burden, and the rejection should be withdrawn.

In view of the foregoing, Applicant respectfully submits that the application is in condition for allowance. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date January 31, 2007

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